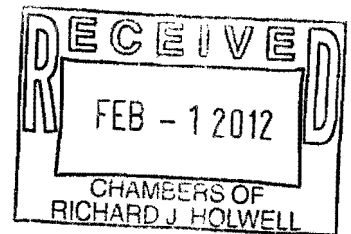


Holwell, R

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



MICROSOFT CORPORATION,

Plaintiff,

v.

DATATERN, INC.,

Defendant.

SAP AG AND SAP AMERICA, INC.,

Plaintiff,

v.

DATATERN, INC.,

Defendant.

Civil Action No. 1:11-cv-02365-RJH

Civil Action No. 1:11-cv-02648-RJH

ECF Case

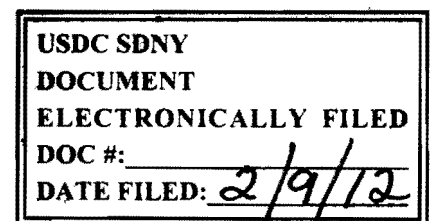
PROPOSED ORDER

WHEREAS, on July 19, 2011, the Court entered a scheduling order in the above-captioned matters (the "July 19 Scheduling Order");

WHEREAS, on September 30, 2011, Plaintiffs Microsoft Corporation ("Microsoft") and SAP AG and SAP America, Inc. (collectively, "SAP" and, with Microsoft, "Plaintiffs") and Defendant DataTern, Inc. ("DataTern" and, with Plaintiffs, the "Parties") exchanged terms for claim construction;

WHEREAS, on November 30, 2011, Plaintiffs and DataTern exchanged proposed constructions for claim terms;

WHEREAS, in an effort to reduce the number of claim terms requiring construction, the Parties have reached a compromise to (i) exchange invalidity and infringement contentions; and (ii) modify the schedule to permit such exchange and related scheduling adjustments; and



WHEREAS, accordingly, Microsoft and SAP, by and among the undersigned counsel, propose to modify the July 19 Scheduling Order as follows:

DataTern's infringement contentions ¹	Mar. 16, 2012
Microsoft's and SAP's invalidity contentions	Apr. 16, 2012
Exchange claim construction terms/proposed constructions	Apr. 23, 2012
Meet and confer re claim construction	Apr. 30, 2012
Opening claim construction briefs ²	May 31, 2012
Expert claim construction depositions	Between May 31 and June 25, 2012
Responsive claim construction briefs	June 25, 2012
Reply claim construction briefs	July 25, 2012
Claim construction hearing	To be determined by the Court
Close of fact discovery	July 30, 2012
Exchange opening expert reports on the issue(s) on which the Party bears the burden	Aug. 30, 2012
Exchange responsive expert reports	Sep. 21, 2012
Close of expert discovery	Oct. 22, 2012
Motions for summary judgment deadline	Nov. 21, 2012
Trial	To be determined by the Court

¹ The Parties have reached an agreement concerning DataTern's non-assertion of certain purported patent claims against users of Microsoft and SAP software; Plaintiffs proposed the following language—which they believe accurately memorializes that agreement—to DataTern for inclusion in this Order:

Insofar as any of the 'Accused Products' (as defined in DataTern's July 1, 2011 counterclaims in this action) form a basis, in whole or in part, for any current or future patent infringement claim for relief by DataTern in any forum against customers and/or users of the Accused Products, DataTern will limit its infringement assertions against such customers and/or users to only those patent claims identified in its infringement contentions in this action.

DataTern has, however, objected to including such language in the proposed Scheduling Order and has instead stated that it will only discuss a side agreement with respect to this issue. As a result, DataTern has not stipulated to this proposed Order. Plaintiffs are not aware of any other DataTern objections to the content of this proposed Order.

² To the extent that a Party intends to present expert evidence/testimony in connection with a claim construction issue and/or at the claim construction hearing, that Party will submit either an expert declaration or an expert report with its opening claim construction brief.

DATED: January 31, 2012

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DATED: January 31, 2012

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SO ORDERED this 7 day of ~~January~~ **FEBRUARY**, 2012


HONORABLE RICHARD J. HOLWELL
UNITED STATES DISTRICT JUDGE

